

58



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,226	08/21/2003	Steve Lin	DES/1250.0030	7137
152	7590	02/04/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,226

Applicant(s)

LIN, STEVE

Examiner

James N Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3727

## DETAILED ACTION

### *Response to Amendment*

1. Due to the new grounds of rejection, this action is Non-Final.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friendship US 4,531,650 in view of Ostrowsky US 4,487,342 and in view of Farris US 5,101,870.

Friendship '650 teaches a container with a circumferential lip (48), and a cap fixed to engage the container open end in a fluid-tight fashion, comprising a circumferential skirt (16), hinge (22), frangible strip (24) with pull-tab (30), inner circumferential flange (and flip-top (14). The cap is fixed to the container by the engagement between band (20) and container shoulder (50).

Friendship '650 does not teach a threaded engagement between the cap and container.

Ostrowsky '324 teaches the mechanical equivalence of a snap connection comprising an internal bead (195) with a "shelf-like upper edge (196)," and between a threaded connection with a ratchet connection between the cap and neck.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connection between the bottle and closure cap of Friendship '650, providing engaging threads and a ratchet teeth to the container neck and closure cap, as taught by Ostrowsky '324 to be a mechanical equivalent to a snap-connection.

Friendship '650 further does not disclose the shape of the container.

Farris '870 teaches a disposable fluid container, and shows it is known to vary the shape of a container body, including forming such containers to a cylindrical shape as shown in fig. 5.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container shape of Friendship '650, forming it to a cylindrical shape, because Farris '870 teaches varying the shape of the container is well-known, within ordinary skill, and lacks an unexpected result. Furthermore, it would have been obvious to form the container of Friendship '650 to a cylindrical shape, or any other desirable shape, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friendship US 4,531,650 in view of Ostrowsky US 4,487,342 and in view of Farris US 5,101,870 as applied above to claim 6, and in further view of Van Baarn US 3,441,161.

Friendship '650 does not teach a tongue.

Van Baarn '161 teaches a tongue (21) proximal to a hinge (14). The projection "serves as a stop against the edge of the container when the cap is open" (col. 3, lines 13-14). The projection will inherently serve to guide the inner circumferential flange into alignment with the circumferential lip of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Friendship '650, providing a tongue/projection such as that taught by Van Baarn '161, motivated by the benefit of providing a stop against the edge of the container when the cap is open.

5. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky US 4,487,342 and in view of Farris US 5,101,870.

Ostrowsky '324 teaches a container and closure, comprising a container lip, screw thread, and ratchet-toothed ring, and closure flip top (14), hinge (48), tear strip (66) with pull tab (64), threaded cap (20) and ratchet teeth (29).

Art Unit: 3727

Regarding the claim limitation for a lip, Examiner submits the following definition of 'lip,' taken from *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*:

1. A structure or part that encircles or bounds an orifice, as:
  - a. Anatomy. A labium.
  - b. The margin of flesh around a wound.
  - c. Either of the margins of the aperture of a gastropod shell.
  - d. **A rim, as of a vessel, bell, or crater.**

In view of line 'd' of the definition, the container rim of Ostrowsky '324 is read as a "lip," and thus meets the claimed limitation.

Ostrowsky '324 does not teach the shape of the container.

Farris '870 teaches a disposable fluid container, and shows it is known to vary the shape of a container body, including forming such containers to a cylindrical shape as shown in fig. 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container shape of Ostrowsky '324, forming it to a cylindrical shape, because Farris '870 teaches varying the shape of the container is well-known, within ordinary skill, and lacks an unexpected result. Furthermore, it would have been obvious to form the container of Friendship '650 to a cylindrical shape, or any other desirable shape, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3727

7. Applicant's arguments, see Remarks, filed 02 December 2004, with respect to the Drawings Objection made in the first Official Action, have been fully considered and are persuasive. The objection of the Drawings has been withdrawn.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,785,209	US 4,821,899
US 5,740,933	US 4,557,393
US 5,687,866	US 4,378,073
US 5,261,569	US 4,131,212
US 5,215,204	US 4,127,221
US 5,207,783	US 3,994,409
US 5,123,556	US 3,991,904
US 4,940,167	US 3,927,784
US 4,919,286	US 3,877,598
US 4,860,907	US 3,869,057
US 4,848,612	US 3,235,117

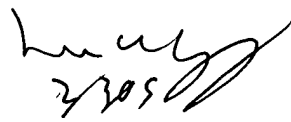
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
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